SINGAPORE REPORTS

PUBLIC PROSECUTOR v. PETER THAM WING FAI

[A.Cr.J. (Chua J.) 10 May 1988]

[Singapore – Magistrate's Appeal No. 335 of 1986]

Criminal Procedure – Sentencing powers of court – Amendments to – Whether a substantive or procedural change in the law – Criminal Procedure Code (Cap. 113, 1970 Ed.), ss. 11(3)(a) & (b), 17 & 17A.

Constitutional Law – Protection of accused person – Constitution of Singapore, Art. 11(1).

The respondent was convicted and sentenced by the District Court for offences under the Penal Code. The Public Prosecutor (the appellant) appealed against the decision of the trial judge that his sentencing powers were governed by the law prior to the 1984 and 1986 amendments on sentencing made to the Criminal Procedure Code. The respondent contended, *inter alia,* that an enhancement of the sentencing powers of the District Court is in effect a substantive change in the law and any retrospective application of changes of the court's sentencing powers would infringe Article 11(1) of the Constitution of the Republic of Singapore.

Held, allowing the appeal: (1) the punishment for the offences which the respondent was convicted is prescribed in section 467 of the Penal Code. There has been no change in the punishment prescribed in section 467 by the amendments. The amending statutes have not increased the penalties for the offences, which the respondent was convicted, over and above those which were in existence at the time of the commission of offences by the respondent. The only change has been to increase the sentencing powers of the District Court. No new disabilities or obligations have been created by the amending statutes, they do not alter the character of the offence or take away any defence which was formerly open to the respondent. It is a mere matter of procedure and according to all the authorities, it is therefore retrospective;

(2) the second limb of Article 11(1) of the Singapore Constitution was not infringed. That Article protects accused persons from greater punishment for an offence than that prescribed at the time of the commission of the offence.

Cases referred to:

(1) *Lim Sing Hiaw* v. *Public Prosecutor* [1965] 1 M.L.J. 85 (cited).
(2) *Teo Cheng Leong* v. *Public Prosecutor* [1970] 2 M.L.J. 275 (cited).
(3) *The King* v. *Chandra Dharma* [1905] 2 K.B. 335 (cited).
(4) *Director of Public Prosecutions* v. *Lamb* [1941] 2 All E.R. 499 (cited).

MAGISTRATE'S APPEAL.

John Koh (*Eleanor Wong (Ms)* with him) for the Public Prosecutor.

Denis Tan for the respondent.

Cur. Adv. Vult.

Chua J.: Peter Tham Wing Fai (the respondent) was convicted and sentenced on 36 charges of forging documents which purported to be valuable securities, being offences punishable under section 467 of the Penal Code (Cap. 103, 1970 Ed.). He was sentenced to four years' imprisonment on each of the 36 charges, to run concurrently except sentences in two of the charges to be served consecutively. Effectively, the respondent has to serve a total of eight years' imprisonment.

Section 467 of the Penal Code provides for a punishment of either life imprisonment, or ten years' imprisonment and, in addition, a fine.

The trial judge said in his grounds of decision (at p. 218 of the record):

> "In my view, as regards sentence, the relevant provisions of the Criminal Procedure Code (Cap. 113), *i.e. the provisions as they stood prior to 1 March 1986 and 31 August 1984, respectively, apply with regard to the present offences.*"

Prior to 1 March 1986, the District Court's sentencing powers were governed by section 11(3) of the Criminal Procedure Code (Cap. 113, 1970 Ed.) and section 11(3)(a) imposed a limit of five years' imprisonment and section 11(3)(b) imposed a limit of $5,000 fine that a District Court could impose.

Section 11(3)(a) and section 11(3)(b) were amended by the Criminal Procedure Code (Amendment) Act (No. 5 of 1986) (which came into force on 1 March 1986) whereby the District Court's sentencing powers were increased to a maximum of seven years' imprisonment and a maximum fine of $10,000.

The powers of the District Court to order consecutive sentences were, prior to 1984, governed by section 17 of the Criminal Procedure Code which is still in force. Section 17 provides the court with a discretion to order consecutive sentences in cases where a person is convicted at one trial of any two or more distinct offences. However, in 1984, by the Criminal Procedure Code (Amendment No. 2) (Act No. 24 of 1984) (which came into force on 31 August 1984), a new section No. 17A was enacted which provides that where a person is convicted of and sentenced to imprisonment for at least three distinct offences at one trial, the court shall order the sentences for at least two of those offences to run consecutively.

The Public Prosecutor now appeals against the decision of the trial judge that his sentencing

powers were governed by the law prior to the amendment in 1984 and 1986.

At the hearing of the appeal, the Deputy Public Prosecutor informs the court that the Public Prosecutor does not now appeal against the sentences imposed against the respondent on the ground that they are manifestly inadequate.

In the present case, the respondent committed the offences in 1979 but was convicted and sentenced in October 1986.

The Public Prosecutor's argument is that the amendments to section 11(3)(a) and section 11(3)(b) of the Criminal Procedure Code are procedural amendments and that the amendments would apply to all sentencing after the date on which the amendments came into operation irrespective of when the offences were committed.

The authorities are clear that, apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective (see *Lim Sing Hiaw* v. *Public Prosecutor*;[1] *Teo Cheng Leong* v. *Public Prosecutor*;[2] *The King* v. *Chandra Dharma*[3]).

It is the contention of the respondent that an enhancement of the sentencing powers of the District Court is in effect a substantive change in the law and any retrospective application of changes of the court's sentencing powers would infringe Article 11(1) of the Constitution of the Republic of Singapore which provides:

"No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed."

The doctrine which one gathers from the authorities is this: When a statute alters the rights of persons, or creates fresh liabilities with regard to persons, or creates or imposes obligations on persons and thereby alters the law, it ought not be held to be retroactive in its operation unless the words are clear, precise and quite free from ambiguity (see *Director of Public Prosecutions* v. *Lamb*[4]).

The punishment for the offences which the respondent was convicted is prescribed in section 467 of the Penal Code. There has been no change in the punishment prescribed in section 467 by the amendments. The amending statutes have not increased the penalties for the offences, which the respondent was convicted, over and above those which were in existence at the time of the commission of the offences by the respondent. The only change has been to increase the sentencing powers of the District Court. No new disabilities or obligations have been created by the amending statutes, they do not alter the character of the offence or take away any defence which was formerly open to the respondent. It is a mere matter of procedure and according to all the authorities, it is therefore retrospective.

The respondent relies on the second limb of Article 11(1) of the Singapore Constitution. His contention is that the phrase "prescribed by law" does not strictly refer to sentencing under any substantive sections of the Penal Code; that it is wide enough and should be liberally construed, since the liberty of an accused person is concerned, to include sections governing the sentencing powers of a court since the latter affects the maximum sentence that can be imposed in respect of any offence. With due respect to counsel for the respondent, I am unable to agree with this submission. In my view, the second limb of Article 11(1) of the Singapore Constitution was not infringed. That Article protects accused persons from greater punishment for an offence than that prescribed at the time of the commission of the offence.

In my opinion, the trial judge was wrong in his view which he took as to his powers in the matter.

Appeal allowed.

Solicitors: *Toh Tan & Partners.*

SIAH OOI CHOE v. PUBLIC PROSECUTOR

[A.Cr.J. (Thean J.) 26 April 1988]

[Singapore – Magistrate's Appeal No. 155 of 1987]

Companies and Corporations – Abetment of offence under section 406(a) of the Companies Act (Cap. 50, 1985 Ed.) – Sentence – Accused hitherto had unblemished record – Contributions to country and society – Appropriate sentence – "Clang of prison gates" principle – Extenuating circumstances present.

Criminal Procedure – Sentencing – Accused hitherto had unblemished record – Contributions to country and society – Appropriate sentence – "Clang of prison gates" principle.

The appellant was charged for having abetted an offence under section 406(a) of the Companies Act (Cap.